

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STERLING MERCHANDISING, INC.,

No. C08-80108 MISC SBA (JCS)

Plaintiff(s),

v.

**NOTICE OF REFERENCE; ORDER
DENYING MOTION TO COMPEL;
ORDER TO MEET AND CONFER**

DREYER'S GRAND ICE CREAM, INC.,

Defendant(s).

TO ALL PARTIES AND COUNSEL OF RECORD:

The above matter has been referred to Magistrate Judge Joseph C. Spero for resolution of Plaintiff's Motion to Compel Compliance with Subpoena Duces Tecum (the "Motion") [Docket No. 1], and all future discovery matters.

IT IS HEREBY ORDERED that the Motion is DENIED for failure of counsel to adequately meet and confer. IT IS HEREBY FURTHER ORDERED that lead trial counsel for both parties shall meet and confer **in person, no later than May 27, 2008.**

In the event that counsel are unable to resolve the matters at issue in the Motion, lead trial counsel shall provide a detailed Joint Letter to the Court by **May 30, 2008**, regarding their meet-and-confer session. This Joint Letter shall include a description of every issue in dispute and, with respect to each such issue, a detailed summary of each party's final substantive position and its final proposed compromise on each issue. Upon receipt of the Joint Letter the Court will determine what future proceedings are necessary.

LAW AND MOTION HEARING PROCEDURES

Civil law and motion is heard on Friday mornings, at 9:30 a.m., Courtroom A, 15th Floor, United States District Court, 450 Golden Gate Avenue, San Francisco, California, 94102.

1 In the event a **discovery dispute** arises, IT IS HEREBY ORDERED that before filing any
2 discovery motion before this Court, the parties must comply with the following:

- 3 1. Lead trial counsel for both parties must meet and confer *in person* regarding the
4 matter(s) at issue. This meeting shall occur after other efforts to resolve the dispute,
5 such as telephone, e-mail, teleconference, or correspondence, have been unsuccessful.
6 Once those efforts have proved unsuccessful, any party may demand a meeting of
7 lead trial counsel to resolve a discovery matter. Such a meeting shall occur within ten
8 (10) business days of the demand. The locations of the meetings shall alternate. The
9 first meeting shall be at a location selected by counsel for Plaintiff(s). If there are any
10 future disputes, the next such meeting shall be held at a location to be determined by
11 counsel for Defendant(s), etc.
- 12 2. Within five (5) business days of the in-person meeting between lead trial counsel
13 referred to above, the parties shall jointly file a detailed letter with the Court, which
14 will include the matters that remain in dispute, a detailed substantive description of
15 each side's position on each such issue, and a description of each side's proposed
16 compromise on each such issue. In the absence of permission from the Court, the
17 letter may not exceed five (5) pages.
- 18 3. After the Court has received the joint letter, the Court will determine what future
19 proceedings, if any, are necessary.

20 In the event that the parties continue to be unable to resolve the matters regarding the timing
21 and scope of discovery, the Court will consider what future actions are necessary. These actions
22 may include the following: (1) sanctions against a party failing to cooperate in the discovery process
23 and meet and confer in good faith, as required by this Order, the Federal Rules of Civil Procedure,
24 and the Local Rules of this Court; and/or (2) requiring the Chief Executive Officers of each party to
25 attend the in-person, meet-and-confer sessions described above. The Court is not entering either of
26 these matters as an Order of the Court at this time, and fully expects counsel to meet their
27 obligations under this Order and under the Local Rules.
28

Regardless of whether the Court reschedules a hearing date, all opposition and reply papers shall be timely filed according to the originally noticed hearing date, pursuant to Civil L. R. 7-3.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

STERLING MERCHANDISING, INC. et al,
Plaintiff,

Case Number: C08-80108 MISC SBA (JCS)

CERTIFICATE OF SERVICE

v.

DREYER'S GRAND ICE CREAM, INC. et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 19, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Adam C. Briggs
Godfrey & Kahn, S.C.
One East Main St., Suite 500
P.O. Box 2719
Madison, WI 53701-2719

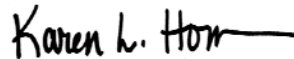
Carmine R. Zarlenga
Attorney at Law
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004

David J. Gilles
Godfrey & Kahn, S.C.
One East Main Street, Suite 500
P.O. Box 2719
Madison, WI 537101-2719

Erik T. Koons
Howrey LLP
1299 Pennsylvania Ave., N.W.
Washington, DC 20004-2402

Kevin J. O'Connor
Godfrey & Kahn, S.C.
1 East Main Street, Suite 500
PO Box 2719
Madison, WI 53701-2719

Dated: May 19, 2008

A handwritten signature in black ink that reads "Karen L. Hom" followed by a horizontal line.

Richard W. Wieking, Clerk
By: Karen Hom, Deputy Clerk